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Order 99-3-26



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 18th day of March, 1999

Served: March 30, 1999

1998 U.S.-Brazil Combination Service Case

Docket OST-98-3863

FINAL ORDER

Summary

By this order, we make final, except to the extent noted, our tentative findings and conclusions in Order 98-12-33 and award the seven available frequencies for U.S.-Brazil services to Continental Airlines, Inc. for Houston-Sao Paulo service and select Delta Air Lines, Inc. as a backup carrier for New York-Sao Paulo service.

Background

By Order 98-5-27, the Department instituted this proceeding to select a carrier to operate seven weekly frequencies available for U.S. carrier U.S.-Brazil services. In our instituting order, we stated that in determining which carriers/gateways would be authorized, our principal objective would be to maximize the public benefits that would result from an award in this case. In this regard, we stated that we would consider which applicants would offer and maintain the best service for the travelling and shipping public, as well as the effects of the service proposals on the overall market structure and level of competition in the U.S.-Brazil market and any other market shown to be relevant, in order to promote an air transportation environment that would sustain the greatest public benefits.

By Order 98-12-33, the Department tentatively selected Continental Airlines, Inc. for the primary award in this proceeding for service in the Houston-Sao Paulo market and Delta Air Lines, Inc.,

for the backup award for service the New York-Brazil market. We also tentatively proposed to authorize United Air Lines, Inc. to use the seven weekly frequencies available on an interim basis for Los Angeles-Sao Paulo services and tentatively selected American Airlines, Inc. as backup to United's interim award should United not institute service. Parties were given 10 days to file objections to the Department's show-cause order and five calendar days thereafter to file answers to any objections filed.

Responsive Pleadings to Order 98-12-33

Delta and United filed objections and seek reversal of the Department's tentative decision. Continental, Delta, United, the Houston Parties, and the City of Los Angeles filed answers to the objections.¹ Delta also filed a motion requesting that the Department reopen the record to require Continental to produce additional evidence.² United filed in support of Delta's motion. Continental filed in opposition. Continental filed a reply to United, and Delta filed a consolidated reply.³

Delta argues that the Department failed to consider Continental's poor performance on its current Newark-Brazil flights and how such performance is relevant to a decision in this case. Specifically, Delta states that Continental's current services are not economic and that its frequencies would be better used by combining its Sao Paulo/Rio de Janeiro services on one daily flight and using the other seven frequencies as proposed for new Houston services. Delta maintains that Continental has "admitted" that it would initiate Houston-Sao Paulo nonstop service even if it did not receive the primary award in this case. By ignoring these facts, Delta maintains the Department failed to recognize the significant market structure benefits that would result in an award to Delta: (1) injecting Delta as a powerful new entrant between New York and Brazil, thus enhancing intragateway competition and competition against foreign airlines; (2) closing the frequency gap between Delta and the other U.S. incumbents for Brazil service; and (3) enabling Delta to initiate service to a second South American country (Uruguay) and to provide single-plane service to Boston. For these reasons, Delta argues that the Department should reopen the record in this case.

United also opposes the Department's tentative decision to select Continental for the primary award, as well as the tentative decision to select Delta for the backup award. United urges the Department to select United as the primary carrier and to award it the seven frequencies for an indefinite period to operate Los Angeles-Sao Paulo nonstop service. United argues that its

¹ Delta's answer was accompanied by a motion for leave to file one day late, noting that due to software difficulties the carrier was unable to deliver its response to the Department before close of business on the answer date. We will grant the motion. United's answer consolidated comments on Delta's objections and Delta's motion to reopen the record. The Houston Parties consist of The City of Houston and the Greater Houston Partnership.

² Delta would require Continental to produce data through December 31, 1998 and to continue to produce data until a final order issues in the proceeding in order to provide the Department with an up-to-date record of Continental's underutilization of U.S.-Brazil frequencies. For the reasons discussed in the Decision Section below, we will not grant the motion.

³ Both carriers filed motions for leave to file an otherwise unauthorized document with respect to these further pleadings. We will grant the motions.

proposed Los Angeles service would provide greater transportation benefits, namely service to a larger local market and service to more nonstop passengers than Continental's proposed Houston service, and that the Department's tentative decision deprives the community of Los Angeles of the opportunity to become a more competitive gateway to Latin America. In this regard, United argues that its service to the underserved Western U.S. region, together with its greater number of nonstop passengers benefited at the Los Angeles gateway, should be deemed to outweigh the benefits of Continental's first nonstop service in the relatively small Houston local market and duplicative online connecting services to the Central U.S. region. Finally, United argues that the Department's tentative decision precludes United from expanding or maintaining its Latin America presence and that the Department discounts United's use of the Los Angeles-Brazil route to integrate its global networks in Asia, the U.S., and Latin America.

If not selected for the primary award, United urges that United, rather than Delta, should be selected as backup. United maintains that Los Angeles, the third largest U.S. gateway, should receive service from one U.S. carrier before a fourth U.S. carrier is added at the New York gateway. Delta disagrees with United's position that United, rather than Delta, should receive the primary award or the backup award, arguing that the New York-Sao Paulo market is 300% larger than the Los Angeles-Sao Paulo market.

United supports Delta's motion to reopen the record, stating that the Department should get updated data from United and American on their experienced load factors for New York-Brazil nonstop services in order to compare those with Continental's results. United maintains that such submissions should demonstrate that the additional frequencies would produce greater benefits if they were awarded to United on a permanent basis for its proposed Los Angeles-Sao Paulo service.

With respect to the proposed interim award, United maintains that, given the substantial investment of resources required and the recent downturn in the Brazilian economy, United would not be prepared to start Los Angeles-Sao Paulo services under the proposed interim allocation and, thus, is not interested in receiving an interim award in this case.

Continental notes that Delta does not challenge the Department's findings that Continental's Houston proposal offers greater service benefits than Delta's New York proposal. Continental states that, instead, Delta has argued that the Department failed to consider Continental's Newark-Brazil traffic and should direct Continental to abandon its nonstop New York-Rio de Janeiro nonstop service. Continental maintains that no party has shown that the additional information requested has any bearing on the Department's fundamental decision that Continental should be selected as the primary carrier to introduce first nonstop Sao Paulo service at Continental's Houston hub.

Specifically, Continental argues that the record already contains information about Continental's Newark-Brazil traffic and that this information is irrelevant to the determination that Continental's proposed Houston service is superior to Delta's JFK proposal. Continental further notes that Delta's former code-share partner Varig experienced lower load factors than Continental's when its service was launched in June 1994 and that Varig still operates in the market today without

Delta, thereby demonstrating that such load factor data are not relevant. Furthermore, Continental argues that it has already made the investment necessary to develop nonstop Brazil service in the Newark-Rio de Janeiro/Sao Paulo routes and intends to make the same investment to develop the Houston-Sao Paulo route. Moreover, Continental states that it intends to comply with the Department's proposed December 1, 1999, startup requirement. Continental refutes the allegation that it said it would operate Houston-Sao Paulo service without an award in this case, but rather that it had stated that without additional Brazil frequencies, it will "be forced to reevaluate its Brazil service pattern." Continental Brief, at 7.

With respect to United, Continental argues that Los Angeles already has Sao Paulo service from United under United's code share with Varig, and United's proposed service would duplicate that service, while Continental would provide a new gateway at Houston, which has no service at all. Continental maintains that the prime beneficiaries of United's proposal are Asian passengers, not U.S.-originating passengers, and that Continental's hub at Houston is much larger than United's operation at Los Angeles.

The Houston Parties support the Department's tentative decision to award the authority to Continental and argue that nothing raised in the objections warrants a different result. They argue that the Department's tentative decision showed that Continental's proposal would add nonstop service at a city which is not only the nation's fourth largest but also the largest city without such service and that the establishment of a gateway at Continental's primary U.S. hub will benefit thousands of passengers in cities and communities behind the Houston gateway.

The City of Los Angeles supports United's objections and urges the Department to reconsider its proposed award and to grant United authority to commence service from Los Angeles to Brazil. It argues that Los Angeles is the preeminent West Coast U.S. gateway, the third largest U.S. gateway overall to Brazil, and that the Los Angeles-Sao Paulo market is the largest U.S.-South America market that does not enjoy U.S.-flag service. It maintains that United's proposal would provide substantial benefits to Los Angeles and notes that United's proposal contemplates integration of the Los Angeles-Sao Paulo route into the United global network centered at Los Angeles.

Decision

We have decided to make final our awards to Continental and Delta. Specifically, we award Continental certificate authority to operate seven weekly frequencies for operations between Houston, Texas, and Sao Paulo, Brazil, and we award Delta backup certificate authority to Continental's award.

Our tentative decision determined that an award to Continental would provide the greatest public benefits in this case. We reached that conclusion after carefully weighing and balancing the merits of all of the proposals of record. We have carefully considered the objections and responses to our tentative decision and conclude that no party has presented any new arguments or evidence that warrant a different conclusion.

Primary Authority

We tentatively selected Continental for an award in this case because the record showed that Continental would be the only carrier whose service would open a new gateway to Brazil; because Continental would provide improved behind-gateway service to more communities and passengers than any other applicant; and because Continental's new service would enhance competition in the U.S.-Brazil market.

No party to this proceeding has objected to the public benefits that we found would result from the implementation of daily nonstop service in the Houston-Sao Paulo market.

Delta's position is that there is no reason to grant Continental's application because Continental would operate Houston-Sao Paulo service in the absence of an award in this case. Delta Objection, at 2. Delta's argument rests on the assumption that Continental intends to switch one of its daily Newark-Brazil flights to Houston because Continental's double-daily operation in that market is now uneconomic. Continental has responded to Delta's argument by urging the Department to reject "Delta's attempt to decide what routes Continental should serve" and states that "Continental intends to comply with the Department's proposed December 1, 1999, startup requirement since the institution of Houston-Sao Paulo service is important to Continental and Houston." Continental Answer, at 6 and 13. No evidence has been submitted in this proceeding that would cause us to conclude that Continental does not intend to honor this commitment, especially since Continental reaffirmed its commitment in response to Delta's contention. Continental Reply, at 1 and 4. In these circumstances, we see no need to reopen the record to receive additional information as requested by Delta and United. Delta's motion to that effect will be denied.

Furthermore, contrary to Delta's assertion, we gave full consideration to the service and competitive benefits offered by its proposal. Order 98-12-33 at pp. 8-9. These included Delta's proposed single-plane Boston service and beyond-Brazil service, as well as the competitive impact its service would have at New York and the effect an award would have on enhancing Delta's presence in the U.S.-Brazil market and on reducing airline concentration and promoting intragateway competition. We determined, however, that these benefits did not outweigh the benefits deriving from opening a totally new gateway, especially as here where the interrelationship of Continental's route system at its Houston hub provides significantly greater beyond area benefits, serving more than twice as many points and benefiting substantially more consumers than Delta under its New York proposal. We further determined, specifically as regards the structural issues, that the selection of Continental would also enhance the ability of a relatively new entrant to compete and to reduce concentration. Delta has provided no evidence or arguments to persuade us to modify those determinations.

United maintains that our tentative decision is flawed because we gave insufficient weight to the factors favoring United and too much weight to the benefits of new entry in the U.S.-Brazil market.

United claims that it will benefit more passengers with nonstop service than Continental. However, United has failed to show that it would provide greater local market benefits than

Continental even if this were the case. United would be introducing new service at a point that is already a well-established gateway to Brazil, and in a market that is already receiving service, including nonstop service, from a large number of airlines. According to the March 1999 Official Airline Guide, six foreign airlines provide direct Los Angeles-Sao Paulo service. United also offers additional code-share flights in that market. The foreign airlines provide a total of 18 weekly round-trip weekly frequencies in the market. Fully two-thirds of those round trips are provided nonstop. By contrast, no airline – U.S. or foreign – provides single-plane service of any kind – nonstop or otherwise, in the Houston-Sao Paulo market. By selecting Continental, we are selecting a new gateway to Brazil, and providing Houston and the region it serves with gateway service benefits that have long been available to Los Angeles. It is in this context that we found that Continental would improve public service and convenience in its local market to a greater degree than United in its local market and that this consideration was a strong factor in Continental's selection.

We make the tentative finding final here and reaffirm our related finding that Continental would provide U.S. passengers the greatest behind-gateway benefits in this case. As to the behind-gateway benefits presented by the proposals, United contends that it would provide better Brazil service to the "underserved" Western region of the U.S. than Continental. United Objections, p. 14. The evidence is that neither has a significant advantage with respect to service to the Western region. While United may provide improved Brazil service to more Western cities, Continental provides improved Brazil service to more people in the Western region. Compare UA Objection p 5 with CO-R-1143.

Looking beyond this regional aspect, however, there continues to be no question that Continental would provide improved behind-gateway service to a much larger number of U.S. communities and travelers than United. Continental's proposal offers seventy-four U.S. communities one-stop round-trip online connecting service. Continental's service would benefit more than 50,000 passengers in the forecast year traveling between those points and Sao Paulo. CO-R-1110 and 1139. United would provide one-stop round-trip online connecting service to less than twenty U.S. communities and benefit fewer than 10,000 U.S. passengers in the forecast year. UA-301. Thus, a comparison between Continental and United shows that Continental would provide improved service to nearly four times the number of U.S. cities and more than five times the number of U.S. passengers than United. This consideration continues to provide additional support for our conclusion that the selection of Continental would provide the greatest public benefits in this case.

Continental's proposal to carry a much larger number of behind-gateway U.S. passengers to Brazil than United also translates into superior competitive benefits, as we found in our tentative decision. United argues that its proposal to increase nonstop service between Los Angeles and Sao Paulo would provide significant competitive benefits. We agree. However, the record shows that Continental's proposal would enhance competition for a far larger number of consumers and communities. Atlanta, Dallas/Ft. Worth, and Miami are three of the largest U.S. gateways to Sao Paulo. Three U.S. airlines and three foreign airlines operate to Sao Paulo from these gateways. These gateways accommodated 538,191 U.S.-Sao Paulo flow passengers last year.

Continental's Houston gateway coupled with its effective hub at that point would enable Continental to provide an attractive alternative for a substantial segment of this large behind-gateway traffic pool. That new alternative should intensify competition between and among the airlines providing U.S.-Sao Paulo air service. By comparison, United's limited online operations would enable it to tap into a much smaller segment of U.S.-Brazil traffic that could use other gateways. In these circumstances, United would provide far less intergateway competition than Continental and would have a far less significant overall impact on market structure than Continental's proposal, even taking into consideration the contribution that United would make to greater intragateway competition.

In deciding this case, we have carefully considered United's contention that it would carry more traffic to Brazil than Continental. That contention rests on United's forecast that it will carry more than 65,000 passengers annually between Asia and Brazil via the Los Angeles gateway. UA-301. We appreciate the contribution that this traffic would make to support United's Los Angeles-Sao Paulo service to enhancing the airline's network operation. However, the indisputable fact of record is that Continental would provide improved service and competition to a far larger number of U.S. consumers and communities. We believe that this consideration outweighs the numbers reflected in United's traffic forecast because the primary focus of this case is on improved service and competition between the U.S. and Brazil.

Backup Authority

We recognize that the choice between Delta and United for backup authority in this case is close. Each airline could step into the market in the event that its backup authority was activated, and each airline enjoys advantages over the other in one or more of the decisional factors that support the selection of Continental. United may be able to provide greater local market benefits considering that it would offer Los Angeles U.S.-flag service that New York now enjoys. Delta may be able to provide more significant behind-gateway service benefits considering that only Delta would offer one-stop single-plane service to a U.S. point. On balance, we continue to favor Delta for backup authority because its proposal would enhance competition more than United's proposal. Both airlines would provide significant intragateway benefits. However, Delta's smaller presence in the U.S.-Brazil market and its New York/Boston proposal would enable it to provide greater intergateway competitive benefits and to have a greater positive impact on market structure than United. Therefore, we make final our tentative award to Delta as backup carrier to Continental's award.

Interim Award

United contends that we gave it no credit for proposing to begin service to Brazil before Continental or Delta. We did give United credit in two significant respects. First, we provided it with the opportunity to serve the Los Angeles-Sao Paulo market pending implementation of Continental's long-term certificate authority. In its responses to the Department's show-cause order, however, United notified the Department that it would not assume the risk of an interim

service and, thus, would not accept an interim award.⁴ Second, we have considered United's startup date as a factor weighing in its favor. We also have concluded that all of the factors supporting Continental for primary authority and Delta for backup authority in this case, on balance, outweigh all of the factors supporting United's request for either authority. United has not presented any matter that warrants a different conclusion. Contrary to United's assertion, we did not find startup dates decisive in the *Los Angeles-Guadalajara Exemption Proceeding*. Indeed, in that case, like this case, we weighed and balanced a number of factors in choosing the best service proposal, including – but by no means exclusively – the issue of when each applicant would begin service. See Order 95-8-3 at 4. In these circumstances, we will not finalize that portion of our tentative decision, and no interim award will be made.

Certificate Conditions

In our tentative decision, we stated our intention to make Continental's certificate authority awarded in this case to be in the form of a five-year, temporary, experimental certificate of public convenience and necessity. Because of the extended startup date proposed by Continental, *i.e.* December 1999, we concluded that an additional startup period was not appropriate and proposed to make its certificate effective upon a final award in this case, with an expiration date of December 1, 1999. We also stated that should Continental commence service by December 1, 1999, consistent with our standard practice, the authorization would continue in effect for five years after the effective date unless the Department earlier suspends, modifies or deletes the authority. Continental did not object to our proposed conditions.

We also stated that given the extended startup date for Continental's primary award, we intended to make Delta's backup award effective for a period of eighteen months, rather than one year and that we would be prepared to make Delta's backup award effective if Continental does not operate all of its allocated frequencies. In this regard, we stated that we would be prepared to activate Delta's backup certificate for its New York-Brazil service, even in circumstances where Continental's dormant frequencies were fewer than the seven weekly frequencies Delta sought for its New York proposal and that in such event upon request by Delta, we would allocate those frequencies to Delta. While Delta has argued in this case that it should be selected for the primary award, it did not object to the terms proposed for the backup award.

In these circumstances, we will finalize our proposed certificate conditions.

ACCORDINGLY,

1. We make final, as modified by this order, our tentative findings and conclusions in Order 98-12-33;
2. We select Continental Airlines, Inc. for an award of primary authority to engage in scheduled foreign air transportation of persons, property, and mail between the terminal point Houston,

⁴ American, for its part, has not indicated that it is interested in an interim award.

Texas, and the terminal point Sao Paulo, Brazil, and issue it a certificate of public convenience and necessity in the form attached;

3. We select Delta Air Lines, Inc. for backup authority to the Continental primary award and issue it a certificate of public convenience and necessity in the form attached, authorizing Delta to engage in scheduled foreign air transportation of persons, property, and mail between New York, New York and Sao Paulo, Brazil, and beyond Sao Paulo to Montevideo, Uruguay;

4. We allocate to Continental Airlines, Inc., seven weekly frequencies to perform its authorized operations in the Houston-Sao Paulo market; and up to a total of seven weekly frequencies to Delta Air Lines, Inc. for New York service, should its backup certificate become activated;

5. Subject to the provisions of ordering paragraph 4 above, the frequencies allocated here are effective immediately and shall remain in effect indefinitely, provided that the carrier continues to hold the necessary underlying authority awarded here, and are subject to our standard condition that we may amend, modify, or revoke the allocation at any time and without hearing, at our discretion;

6. Except as modified with respect to Delta's backup certificate award in this case, the frequencies allocated here are subject to the condition that the frequencies will expire automatically and will revert to the Department for reallocation if they are not used for a period of 90 days;⁵

7. We grant all motions to file otherwise unauthorized documents;

8. We deny Delta's motion to reopen the record;

9. To the extent not specifically granted or denied, we deny all other motions and requests in this docket;

10. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates shall become effective on the 61st day after its submission for section 41307 review or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that the President does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁶ and

⁵ Subject to the startup conditions imposed in the attached certificates, the dormancy period will begin upon inauguration of service by the carrier(s).

⁶ This order was submitted for section 41307 review on March 18, 1999.

On March 29, 1999, we received notification that the President's designee under Executive Order 12597 and its implementing regulations did not intend to disapprove the Department's order.

11. We will serve this order on American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., United Air Lines, Inc., the City of Houston and the Greater Houston Partnership, the New York Parties, the Massachusetts Port Authority, the City of Los Angeles, the Ambassador of Brazil in Washington DC, the Federal Aviation Administration, and the U.S. Department of State (Office of Aviation Negotiations).

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*



**Experimental Certificate
of Public Convenience and Necessity
for
Route
758**

**This Certifies That
CONTINENTAL AIRLINES, INC.**

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 99-3-26
On March 18, 1999
Aviation**

Effective on March 29, 1999

**Patrick V. Murphy
Deputy Assistant Secretary for
and International Affairs**

Issued by
Order 99-3-26
Route 758

Terms, Conditions, and Limitations

CONTINENTAL AIRLINES, INC.

is authorized to engage in foreign air transportation of persons, property, and mail:

Between Houston, Texas, and the terminal point Sao Paulo, Brazil.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.
- (5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).

(6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S. C. or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holder of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall become effective March 29, 1999. It shall expire December 1, 1999; provided, however, that if the holder inaugurates service under this certificate on or before that date, the authorization will continue in effect until five years after its effective date unless the Department of Transportation earlier suspends, modifies, or deletes the authority.



**Backup
Experimental Certificate
of Public Convenience and Necessity
for
Route**

759

This Certifies That

DELTA AIR LINES, INC.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 99-3-26
On March 18, 1999
Aviation**

Effective on (See Attached)

**Patrick V. Murphy
Deputy Assistant Secretary for
and International Affairs**

Terms, Conditions, and Limitations

DELTA AIR LINES, INC.

is authorized to engage in foreign air transportation of persons, property, and mail:

Between New York, New York, and Sao Paulo, Brazil, and beyond Sao Paulo to Montevideo, Uruguay.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.
- (5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S. C. or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holder of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall not become effective until either (1) Continental Airlines notifies the Department that it is not using all of the frequencies allocated in this proceeding and relinquishes those unused frequencies to the Department for reallocation, or any such allocated frequencies become dormant and automatically revert to the Department under the dormancy conditions imposed on the frequency allocation, in which case the dormant frequencies, upon request and further order of the Department, will be allocated to Delta for the New York services authorized by this certificate or (2) the certificate authority of Continental has expired or has been deleted or suspended; it shall expire September 29, 2000; provided, however, that if this authority becomes effective before that date, it shall not expire until March 29, 2004, unless the holder fails to inaugurate service within 90 days of that effective date, in which case, this certificate will expire on the 91st day.